For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. A new § 928.225 is added to read as follows:

§ 928.225 Expenses and assessment rate.

Expenses of $465,800 by the Papaya Administrative Committee are authorized and an assessment rate of $.0089 per pound of assessable papayas is established for the fiscal year ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: August 15, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–20590 Filed 8–18–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 997

[Docket No. FV95–997–1IFR]

Assessment Obligation for 1995–96 Crop Year Peanuts Under 7 CFR Part 997; Peanuts Not Subject to Peanut Marketing Agreement No. 146

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document implements an administrative assessment on farmers stock peanuts received or acquired by handlers who are not signatory (non-signatory handlers) to Peanut Marketing Agreement No. 146 (Agreement). The assessment rate for 1995–96 crop year peanuts shall be $.70 per net ton. In addition, this rule clarifies which categories of farmers stock peanuts are assessable. This rule also establishes that non-signatory handlers shall submit their pro rata assessment to the Secretary of Agriculture. The assessment rate is the same as the administrative assessment established by the Department on handlers who are signers of the Agreement (signatory handlers).

DATES: Effective July 1, 1995, through June 30, 1996. Comments which are received by September 20, 1995 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–2020, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), and as further amended December 12, 1989; Public Law 101–220, section 4 (1), (2), 103 Stat. 1878, December 12, 1989; and Public Law 103–66, section 8b(b)(1), 107 Stat. 312, August 10, 1993.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. The Department is establishing a 1995–96 crop year assessment rate applicable to non-signatory handlers effective July 1, 1995–June 30, 1996. Farmers stock peanuts received or acquired by non-signatory handlers during that crop year will be subject to the assessment. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this interim final rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 45 handlers of peanuts who have not signed the Agreement and, thus, will be subject to the regulations specified herein. There are also approximately 47,000 producers of peanuts, who potentially might do business with these handlers. The Small Business Administration now defines small agricultural service firms (13 CFR 121.601) as those having annual receipts of less than $5,000,000 and small agricultural producers as those whose annual receipts are less than $500,000. A majority of non-signatory handlers and peanut producers may be classified as small entities.

The Agreement was established in 1965 and plays a very important role in maintaining the industry's quality control efforts. The Peanut Administrative Committee (Committee) was established by the Agreement and works with the Department in administering the marketing agreement program. Approximately 95 percent of the domestically produced peanut crop is marketed by handlers who are signatory to the Agreement.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. Agreement requirements provide that farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) must be diverted to non-edible uses. Each lot of shelled peanuts destined for edible channels must be officially sampled and chemically tested for aflatoxin by Department laboratories or laboratories approved by the Committee.

Public Law 101–220 amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Approximately 5 percent of the U.S. peanut crop is marketed by non-signer handlers.

Regulations to implement Pub. L. 101–220 were issued and made effective on December 4, 1990 (55 FR 49980). The regulations, which have been amended several times, are published in 7 CFR Part 997—Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement. Under these provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the edible quality requirements of the Agreement. All amendments were made to ensure that the non-signer handling requirements remain the same as, or are equal to, the handling requirements applied to signatory handlers under the Agreement.

Public Law 103–66 (107 Stat. 312) provides for mandatory assessment of farmer's stock peanuts acquired by non-signatory peanut handlers. Under this

law, paragraph (b) of section 1001, of the Agricultural Reconciliation Act of 1993, specifies that: (1) Any assessment (except indemnification assessments) imposed under the Agreement on signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary.

The Committee meets in February or March each year and recommends to the Secretary a per ton, administrative assessment of farmers stock peanuts received or acquired by signatory handlers for the upcoming crop year. The crop year covers the 12-month period from July 1 to June 30.

The Committee met on March 23, 1995, and unanimously recommended a $.70 administrative assessment per ton of 1995–96 crop year farmers stock peanuts received or acquired by signatory handlers. The Department published an interim final rule in the May 17, 1995, issue of the **Federal Register** (60 FR 26348) which implemented such an administrative assessment on signatory handlers.

Peanuts will be assessed based on the rate applicable to the crop year in which the lot is presented for incoming inspection. Therefore, pursuant to Pub. L. 103–66, this interim final rule provides notice that, for the 1995–96 crop year, the Department will assess non-signatory handlers a $.70 administrative assessment per net ton of farmers stock peanuts received or acquired by non-signatory handlers.

This rule clarifies which categories of farmers stock peanuts are assessed. Segregation 1 peanuts are assessed under the Agreement and under this regulation. Until recently, all Segregation 2 and 3 peanuts were subject to assessment. However, the Committee recommended that signatory handler assessments should not be applied to Segregation 2 and 3 peanuts that are crushed for oil. Crushing represents the minimum market value that handlers can receive for poor quality peanuts. Thus, it is reasonable that assessments should not be applied to such peanuts. The Secretary approved the Committee's recommendation by issuing an interim final rule in the July 17, 1995, issue of the **Federal Register** (60 FR 36207. Thus, this rule also establishes that Segregation 2 and 3 peanuts acquired by non-signatory handlers and disposed of to crushing shall not be assessed pursuant to § 997.51. Under some surplus market conditions, Segregation 1 peanuts may also be crushed for oil. However, such peanuts are not exempt from assessments.

The assessment will be applied to all such peanuts received or acquired for a handler's account, including the handler's own production. The assessment will be based on: (1) Tonnage reported on incoming inspection certificates of each handler's Segregation 1 farmers stock peanuts received or acquired for the handler's account, and (2) Segregation 2 and 3 tonnage received or acquired for non-edible uses, except Segregation 2 and 3 peanuts sent to crushing.

Segregation 1 peanuts are defined as farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.* Segregation 2 peanuts are defined as farmers stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.* Segregation 3 peanuts are defined as farmers stock peanuts with visible *Aspergillus flavus.*

Handling is defined in § 997.14 as engaging in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce. Handling does not include the sale or delivery of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handlers and the sale or delivery of peanuts by such intermediary to a handler.

Section 997.15 defines a non-signatory handler as ''any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handler: *Provided,* That this term does not include handlers signatory to the Peanut Marketing Agreement.''

Thus, for the 1995–96 crop year, a handler who receives or acquires a 100,000 pound shipment of Segregation 1 farmers stock peanuts will pay an assessment of $35 (100,000 pounds is 50 tons, times 70 cents per ton, equals $35).

The assessment is applied, pro rata, on each non-signatory handler who is the first handler to receive or acquire an assessable lot of farmers stock peanuts. Only one assessment is applied to each farmers stock peanut lot. Assessments will not be applied on peanuts received or acquired from other handlers, speculators, buying points, brokers, or other entities who have paid assessments on the peanuts received or acquired.

Assessments will not be applied on peanuts received on behalf of an area association pursuant to a peanut receiving and warehouse contract.

Non-signatory producer/handlers who store peanuts of their own production (''farm-stored'' peanuts) will, at some point prior to further handling, obtain incoming inspection on such peanuts. At the time of incoming inspection, such producer/handlers shall pay their pro rata administrative assessment on such farm stored peanuts.

Speculators, brokers, or other entities who take possession of farmers stock peanuts, submit such peanuts for incoming inspection, and subsequently enter such peanuts into edible and non-edible channels of commerce will pay assessments on such peanuts—except Segregation 2 and 3 peanuts crushed for oil.

A crop year's original assessment may be increased by the Secretary to cover a deficit in administrative funds, but only if based on a similar increase applied by the Secretary on signatory handlers. Such an increase will be applied on all assessable peanuts handled by non-signatory handlers during the crop year in which the increased assessment occurred.

Also pursuant to Pub. L. 103–66, this rule establishes that non-signatory handlers pay their administrative assessment to the Secretary. The Secretary will bill non-signatory handlers on a periodic basis determined by the Secretary. Each non-signatory handler will be responsible for remitting payment by the date specified. Payment in the form of a personal check, cashier's check, or money order shall be remitted to the Department. Audits of each handler's account may be conducted by the Department to reconcile farmers stock peanuts received or acquired and assessments paid.

This interim final rule is the third notice of intent to assess non-signatory peanut handlers. A similar assessment notice for the 1994 crop year was published in the August 3, 1994 issue of the **Federal Register** (59 FR 39419). However, because the Department was unprepared to begin collecting farmers stock data and unable to commence an assessment billing and collection procedure, implementation of assessments was delayed until the 1995–96 crop year (60 FR 6394, February 2, 1995).

The Department corrects an error in the sample assessment obligation calculation published in that final rule.

The erroneous example indicated that application of a $.60 per ton assessment rate on 50,000 tons of Segregation 1 farmers stock peanuts would result in an assessment obligation of $60. However, the correct assessment obligation in that example should have been $30 (50 tons, times $.60 per ton, equals $30).

Violation of this assessment regulation may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price of quota peanuts for the crop year during which the violation occurs. The support price for quota peanuts is determined under 7 U.S.C. 1445c-3.

This administrative assessment rate will impose some additional costs on non-signatory handlers. However, the costs will be in the form of uniform assessments on all handlers who are not signatory to the Agreement as well as all signatory handlers.

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0163.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities. This rule is required by law. This administrative assessment will be applied uniformly to all non-signatory handlers and will be of benefit to all.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Public Law 103–66 requires the Department to impose an administrative assessment on peanuts received or acquired for the account of non-signatory handlers; (2) notice of intent to assess the 1995 crop peanuts was published in the **Federal Register** as a finalization of an interim final rule on February 2, 1995 (60 FR 6394); (3) the peanut crop year begins July 1, and to achieve the intended purpose of the law this action should be taken promptly; and (4) this interim final rule provides a 30-day comment period and any comments received will be considered prior to finalization of any rule.

List of Subjects in 7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new paragraph (b)(6) is added to § 997.40 to read as follows:

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

* * * * *

(b) * * *

(6) Peanuts handled pursuant to paragraphs (b)(4)(i) and (b)(4)(iii) of this section are exempt from § 997.51 Assessments.

3. A new undesignated centerheading and § 997.100 are added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

Implementing Regulation

§ 997.100 Assessments.

For the 1995–96 crop year, the administrative assessment is $0.70 per net ton of assessable farmers stock peanuts received or acquired by each non-signatory handler.

Dated: August 15, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–20644 Filed 8–18–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 117

[Docket No. 93–048–2]

Viruses, Serums, Toxins, and Analogous Products; Test Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow appropriate treatment of certain sick or injured test animals and the humane destruction of dying animals used in the testing of veterinary biological products. The effect of this action is to eliminate unnecessary discomfort to animals used in vaccine testing. The amendment provides the firms with a previously unauthorized option for handling test animals that are accidentally injured, become ill, or exhibit unfavorable reactions for reasons not due to the test. These animals may be removed from the test and treated or humanely destroyed. In addition, test animals that show clinical signs of illness resulting from the test may be treated or humanely destroyed when death is certain to occur without therapeutic intervention.

This action is necessary to provide for the treatment or humane destruction of ill or injured test animals under defined conditions. This option is not currently allowed by the regulations for test animals.

EFFECTIVE DATE: September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 117 pertain to veterinary biological products that are licensed under the Virus-Serum-Toxin Act on the basis of their purity, safety, potency, and efficacy. In the course of evaluating a biological product, it is necessary to conduct potency, safety, or efficacy tests in animals.

This amendment is intended to eliminate unnecessary discomfort or suffering in the test animals as a result of injury, unfavorable reactions, or illness attributable to the test.

On October 25, 1994, we published in the **Federal Register** (59 FR 53612–53613, Docket No. 93–048–1) a proposal to amend the regulations in 9 CFR 117.4. We proposed that test animals which exhibit clinical signs of illness, become accidentally injured, or exhibit unfavorable reactions through events not associated with the test, may be removed from the test and be treated or humanely destroyed. We also proposed to allow for the treatment of test animals showing illness due to the test or humane destruction of test animals which show clinical signs of illness attributable to the challenge microorganism, which are likely to result in death.

We solicited comments concerning our proposed amendment for 60 days ending December 27, 1994. We received two comments by that date. Both comments were from producers of